



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R02-OAR-2021-0553; FRL-9736-01-R2]**

### **Approval of Air Quality Implementation Plans; New York; Revision to 6 NYCRR**

#### **Part 235 Consumer Products**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the New York State Implementation Plan (SIP) for the purposes of implementing control of air pollution for volatile organic compounds (VOC). The proposed SIP revision consists of amendments to New York's Codes, Rules, and Regulations (NYCRR) that implement control measures for Consumer Products. The intended effect of this action is to approve control strategies which will result in VOC emission reductions that will help attain and maintain the national ambient air quality standards (NAAQS) for ozone. These actions are being taken in accordance with the requirements of the Clean Air Act.

**DATES:** Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R02-OAR-2021-0553, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment.

The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the internet, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Linda Longo at (212) 637-3356 or by email at [longo.linda@epa.gov](mailto:longo.linda@epa.gov), or by mail at Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007-1866.

**SUPPLEMENTARY INFORMATION:**

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**I. Background**

*Ozone Requirements*

Section 182 of the Clean Air Act (CAA) specifies the required SIP submissions and requirements for areas classified as nonattainment for ozone and when these submissions and requirements are to be submitted to the EPA by the States. The specific requirements vary depending upon the severity of the ozone problem. CAA section 182(b)(2)(A) requires that for ozone nonattainment areas classified as Moderate or above, States must revise their SIPs to include provisions to implement Reasonably Available Control technology (RACT). CAA section 184(b)(1)(B) extends the RACT obligation to all areas of the State within the Ozone Transport Region. In addition to New York being

classified as nonattainment for the 2008 and 2015 ozone standards for the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT area, New York is a member of the Ozone Transport Region. States subject to RACT requirements are required to adopt controls through the adoption of regulations, or by issuance of single source orders or permits that outline what the source is required to do to meet RACT. The Ozone Transport Commission developed control measures into model rules for a number of source categories and estimated emission reduction benefits from implementing these model rules. These model rules were designed for use by States in developing their own regulations to achieve additional emission reductions. The proposed revisions to the consumer products rule will provide VOC emission reductions to address, in part, attainment of the 8-hour ozone standard in the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area, which is composed of the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester, and Rockland. These revisions will also address, in part, the RACT requirements by providing VOC emission reductions statewide.

## **II. What was included in New York’s submission of part 235?**

On March 2, 2021, New York submitted a proposed SIP revision to Title 6 NYCRR part 235, “Consumer Products,” including attendant revisions to part 200, section 200.9, “General Provisions, Reference material.” The EPA finds the State’s submission is complete. The proposed rulemaking applies to any person who sells, supplies, offers for sale, or manufactures consumer products for use in the State of New York.

## **III. What is the EPA’s evaluation of part 235?**

The most recent federally approved version of 6 NYCRR part 235, “Consumer Products,” was published on May 28, 2010. *See* 75 FR 29897 (May 28, 2010). The current proposed revision was submitted by the State on March 2, 2021, with a State

enforceability date of January 1, 2022. The proposed regulations target a group of household and commonly used products, referred to as “consumer products,” and are submitted for EPA approval with the goal of limiting and reducing VOC emissions statewide. The EPA’s evaluation recognizes that the proposal is consistent with the Ozone Transport Commission Model Rule for consumer products and will help the State attain the NAAQS by improving air quality through reduced VOC emissions and promoting regional consumer product consistency. The proposed revisions to part 235 are expected to reduce VOC released to the air by 5.3 tons per day. Since the use of consumer products is highest in population centers, the reductions in the New York City metro area alone, where the 2008 ozone standard is exceeded, is expected to be 3.4 tons per day. To achieve these emission reductions, new product categories were added with new VOC limits and existing product categories were revised to reduce their VOC limits. In addition, revisions were made in the definitions section at 6 NYCRR section 235-2.1 to provide transitional language and to cite which emission standards apply before or after the January 1, 2022 compliance date.

*New product categories with new VOC limits*

As identified in the “Table of Standards” within section 235-3.1, the proposed revision includes nine new product categories, some with sub-categories, with new VOC content limits, percent by weight, as follows: (1) air freshener product category for *dual purpose air fresheners/disinfectants* subcategory at 60; (2) anti-static product category for *aerosols* subcategory at 80; (3) automotive windshield cleaner at 35; (4) bathroom and tile cleaner product category for *non-aerosols* subcategory at 1; (5) disinfectant product category for *aerosols* subcategory at 70 and *non-aerosols* subcategory at 1; (6) multi-purpose solvent product category at 3; (7) paint thinner product category at 3; (8) sanitizers product category for *aerosols* subcategory at 70 and *non-aerosols* subcategory at 1; (9) temporary hair color product category for *aerosols* subcategory at 55. In

addition, two existing product categories have new sub-categories with new VOC content limits, percent by weight, as follows: (1) furniture maintenance product category for *non-aerosols (except solid or paste)* subcategory at 3; and (2) oven or grill cleaners product category for *non-aerosols* subcategory at 4.

#### *Reduced VOC limits on existing product categories*

As identified in the Table of Standards, section 235-3.1, the proposed revision includes reduced VOC content limits for ten existing product categories or subcategories, percent by weight, for the following: (1) adhesives product category for *construction paneling and floor covering* subcategory reduced from 15 to 7; (2) automotive brake cleaner[s]/brake cleaner product category from 45 to 10; (3) carburetor or fuel-injection air intake cleaners product category from 45 to 10; (4) engine degreasers product category for *aerosols* subcategory from 35 to 10; (5) floor polishes and waxes product category for *flexible flooring materials* subcategory from 7 to 1, and for *non-resilient flooring* subcategory from 10 to 1; (6) general purpose cleaners product category for *aerosols* subcategory from 10 to 8; (7) general purpose degreaser product category for *aerosols* subcategory from 50 to 10; (8) laundry starch products category from 5 to 4.5; (9) nail polish remover product category from 75 to 1; (10) shaving gel product category from 7 to 4.

#### *Ozone Transport Commission consumer products model rule and neighboring States*

New York is implementing the Ozone Transport Commission's model rule for consumer products<sup>1</sup> in order to reduce VOC emissions and maintain regional product consistency in accordance with a Memorandum of Understanding among the Ozone Transport Commission States,<sup>2</sup> of which New York is a signatory. The new and revised

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<sup>1</sup> The Ozone Transport Commission consumer products model rule documents can be found at <https://otcair.org/document.asp?fview=modelrules>. Scroll to 2018 for "Regulatory & Technical Guideline for Consumer Products Phase V" (formerly known as the "OTC Model Rule for Consumer Products") and technical support documents for emissions and costs.

<sup>2</sup> The Ozone Transport Commission Memorandum of Understanding, dated June 3, 2010, is provided in the docket.

emission limits identified in the “Table of Standards,” and explained above, reflect New York’s contribution to reducing the potential emissions from consumer products. The VOC content limits for part 235 are lower than or equal to neighboring States and maintain regional product consistency. The EPA reviewed New York’s submission and confirmed that the regulations are consistent with similar regulations adopted by neighboring States and consistent with the Ozone Transport Commission Model Rule.

*Part 235 public notice state-side*

New York received six public comments on its proposed rule. New York addressed the comments by: (1) Recognizing that consumer products can contain ozone precursor pollutants and working to reduce ozone precursor pollutants; (2) revising the compliance date to January 1, 2022 to allow manufacturers and distributors additional time to address distribution issues and provide compliant products to retail outlets, and (3) allowing manufacturers the option to sell the existing stock of products that were manufactured before the compliance date (sell-through provisions) specified in the “Table of Standards” at section 235-3.1.

The EPA is satisfied with New York’s responses to the public comments. Regarding the first topic addressed above, through its rule, New York is addressing emission sources to reduce ozone by regulating products that contain ozone precursor pollutant emissions, such as volatile chemical products. For example, adhesives can be a volatile chemical product, and the proposed revised emission limits will reduce the Construction, Panel, and Floor Covering adhesive category by more than half, from 15 to 7 percent VOC content by weight. Regarding the second topic addressed above, New York is revising the rule to extend the compliance date from January 1, 2021 to January 1, 2022 to address manufacturers’ and distributors’ distribution challenges and provide compliant products to retail outlets. Lastly, regarding the third topic addressed above, New York revised the sell-through provisions to allow manufacturers to sell their existing

stock of products that were manufactured before the January 1, 2022 compliance date.

*Part 200, “General Provisions,” section 200.9, Table 1, “Referenced Materials”*

The current proposed revision includes attendant revisions to 6 NYCRR part 200, “General Provisions,” section 200.9, Table 1, “Referenced Materials,” which include American Society for Testing Materials (ASTM) testing procedures, the California Air Resources Board (CARB) provisions supporting this regulation, and updated references to part 235. The EPA is satisfied that the revisions to section 200.9 are appropriate.

#### **IV. The EPA’s proposed action**

The EPA has evaluated New York’s proposed revision for consistency with the Clean Air Act, the EPA regulations, and policy. The EPA is proposing to approve revisions to the New York SIP and amendment to 6 NYCRR part 235, “Consumer Products,” including attendant revisions to 6 NYCRR part 200, “General Provisions,” section 200.9, Table 1, “Referenced Materials,” with a State effective date of February 11, 2021. Specifically, this rulemaking proposes to add nine new product categories and two new subcategories with new VOC emission limits and proposes to reduce the VOC emission limits in ten existing product categories. The proposed revisions will help the State to comply with Federal requirements pertaining to attainment and maintenance of the ozone NAAQS. The EPA is soliciting public comments on the items discussed in this document. These comments will be considered before taking final action.

#### **V. Incorporation by Reference**

In this document, the EPA is proposing to include regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference revisions to 6 NYCRR part 235, “Consumer Products,” including attendant revisions to 6 NYCRR part 200, “General Provisions,” section 200.9, Table 1, “Referenced Materials,” as described in this preamble. The EPA has made, and will continue to make, these materials generally available through

[www.regulations.gov](http://www.regulations.gov) and at the EPA Region 2 Office (please contact the person identified in the FOR FURTHER INFORMATION CONTACT section of this preamble for more information).

## **VI. Statutory and Executive Order Reviews**

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735 (October 4, 1993)) and 13563 (76 FR 3821 (January 21, 2011));
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255 (August 10, 1999));
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885 (April 23, 1997));
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355



(May 22, 2001));

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629 (February 16, 1994)).

In addition, this proposed rulemaking, addressing New York's 6 NYCRR part 235, "Consumer Products," is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### **List of Subjects in 40 CFR part 52**

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 et seq.

**Lisa Garcia,**  
*Regional Administrator,*  
*Region 2.*